

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Attorney Docket No. 14425US02

In the Application of:

Steven Koenck

Serial No. 10/787,443

Filed: February 26, 2004

For: MODULAR, PORTABLE DATA
PROCESSING TERMINAL FOR
USE IN A COMMUNICATION
NETWORK

Examiner: CHERY, DADY

Group Art Unit: 2616

Confirmation No.: 7829

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is
being sent via EFS-Web to the United
States Patent and Trademark Office on
October 22, 2008.

/Philip Henry Sheridan/

Philip Henry Sheridan

Reg. No. 59,918

**LITIGATION STATEMENT PURSUANT TO MPEP § 2001.06(C) and SUPPLEMENTAL
INFORMATION DISCLOSURE STATEMENT**

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with MPEP § 2001.06(c), the Applicants would like to bring to the attention of the U.S. Patent and Trademark Office that the subject matter currently being claimed in the present application may be related to at least one of the patents currently asserted by owner of record of the present application, Broadcom Corporation, in a stayed patent infringement action between Broadcom and Qualcomm, Inc., in the Central District of California, Civil Action No. 05-468. Further, U.S. Patent No. 6,714,983 was a subject of a U.S. International Trade Commission ("ITC") investigation styled *In the Matter of Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets*, Investigation No. 337-TA-543 ("ITC Investigation"). The administrative law judge in the ITC Investigation found that the claims at issue of the '983 patent were valid, Qualcomm's chipsets did not directly infringe the claims at issue of the '983 patent, Qualcomm induced infringement of the '983 patent, and issued a limited

exclusion order. The ITC Investigation judgment was then appealed to the U.S. Court of Appeals for the Federal Circuit. On October 14, 2008, **the Court of Appeals for the Federal Circuit affirmed the Commission's determination that the '983 patent is valid**, affirmed the Commission's determination of no direct infringement by Qualcomm, vacated and remanded the Commission's determination regarding induced infringement, and vacated and remanded the limited exclusion order.

The Applicant further notes that the Court of Appeals for the Federal Circuit rejected Qualcomm's proposed construction of "different" first and second wireless communications as including any conceivable difference between the communications. In rejecting Qualcomm's claim construction, the Court of Appeals for the Federal Circuit stated at page 12 that "the specification and context in this case show that the 'different' wireless communications means a difference in the method of communication, not simply any conceivable difference. Accordingly, this court sustains the ITC determination that 'different' first and second wireless communications refers to two different methods of communication."

Moreover, page 13 of the Court of Appeals for the Federal Circuit decision states that "[b]ecause this court affirms the ITC's claim construction and rejects Qualcomm's broader understanding of 'different' in the context of claim 1 of the '983 patent, this court affirms the ITC's finding that the Moore, Borrás, and Sato references do not anticipate under 35 U.S.C. § 102."

Additionally, the owner of record of the present application, Broadcom Corporation, is currently involved in an ex parte reexamination of U.S. Patent No. 6,714,983 (Control No. 90/008,819) at the request of Qualcomm, Inc.

Further, the Applicants submit herewith a Supplemental Information Disclosure Statement, including form PTO/SB/08 which has one (1) page. A copy of each printed reference listed in the PTO/SB/08A form is also attached. Applicants, however, have not submitted U.S. Patents or other references previously provided to or by the PTO in this application. Six (6) references, including the Court of Appeals for the Federal Circuit's decision, are attached in one electronic submission for the Supplemental Information Disclosure Statement.

The references being submitted, other than the Court of Appeals for the Federal Circuit's decision, have been either cited, produced or relied upon by Qualcomm thus far during the above-mentioned reexamination. This electronic submission is in no way intended as an admission that the submitted references constitute prior art under any subsection of 35 U.S.C. §102 or §103. Applicant expressly retains the right to argue that any of the cited references are not indeed prior art or to take any actions necessary to remove any of the cited references from the available prior art.

The Examiner is requested to initial the attached PTO/SB/08 and return one copy to the applicants to indicate consideration of the attached reference.

A fee of \$180.00 is due because:

- The first Office action on the merits has been received by applicant(s).

- Applicant(s) believe(s) that this statement and attachments are being filed before any final action has been mailed by the PTO; before a notice of allowance has issued; and prior to any other action that would close prosecution in the application. The basis of this belief is that no final action, no notice of allowance, and no other action that would close prosecution of the application appear to have been received by the undersigned to date.

The Commissioner is hereby authorized to charge any fees which are presently required, or credit any overpayment, to Deposit Account No. 13-0017.

Respectfully submitted,

Date: October 22, 2008

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